



CITY MANAGER

CITY OF SUFFOLK

P.O. BOX 1858, SUFFOLK, VIRGINIA 23439, PHONE 925-6344

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October 29, 1997

Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

To Whom It May Concern:

Pursuant to Sections 1.415 and 1.419 of the Commissions Rules, 47 C.F.R. §§ 1.415 and 1.419, the City of Suffolk, Virginia, respectfully submits the attached comments to the Notice of Proposed Rule Making in the matter of *Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities* (MM Docket No. 97-182) to the Federal Communications Commission.

If additional information is required, please contact my office at 757-925-6344.

Sincerely

Myles E. Standish
City Manager



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City of Suffolk, Virginia

REG. MAIL ROOM

Comments on the
Federal Communications Commission Notice of Proposed Rules Making
Preemption of State and Local Zoning and Land Use Restrictions on the
Siting, Placement and Construction of Broadcast Station Transmission
Facilities

(MM Docket No. 97-182)

Background:

The Federal Communications Commission (FCC) has issued a Notice of Proposed Rule Making (MM Docket No. 97-182) affecting the siting, placement and construction of broadcast station transmission facilities. This rule, requested by the National Association of Broadcasters and the Association for Maximum Service Television, would allow for the preemption of state and local zoning and land use restrictions which inhibit or delay the placement of telecommunication towers and antennas. The FCC has requested comments on the proposed rule.

Statement of Policy:

The City of Suffolk, Virginia, believes that a strong telecommunications infrastructure is an integral part of the economic development strategy of the City and is an important component of the quality of life of its citizens. Therefore, the City encourages the development of the telecommunications infrastructure within its boundaries. However, the City also maintains that the telecommunications industry should recognize and respect the authority of local governments to reasonably control the placement of telecommunications towers and antennas. The City is opposed to any law, rule, or regulation which would preempt local government's traditional authority to govern local land use decisions.

Comments on the Proposed NAB/AMST Preemption Rule:

General issues:

The City recognizes the FCC's intent to allow for the rapid deployment of digital television services; however, the City maintains that the proposed NAB/AMST preemption rule poses a serious threat to the traditional, and necessary, authority of local governments to control local zoning and land use decisions.

The schedule for the implementation of digital TV service, as indicated in the Fifth Report and Order, calls for the top four networks in the top ten markets to be on the air

by May 1, 1999, the next twenty markets by November 1, 1999, and the in the rest of the nation by May 1, 2002. The top ten networks account for approximately 30% of households in the United States. It is clear that the priorities of the digital television industry are to rapidly deploy digital television service to the 30% of households in the top ten markets. The City of Suffolk is comprised of the 70% of U.S. households that are not in the top ten markets. Therefore, it appears that the needs of digital television industry to rapidly deploy service to a few select markets are driving the rulemaking process. In other words, the proposed rule would preempt local control in 70% of the United States in order to grant the digital television industry control in 30% of the nation.

Since the passage of the Telecommunications Act of 1996, local governments have worked diligently to ensure that local ordinances and zoning procedures are fair and nondiscriminatory in their handling of telecommunications tower requests. Due to the effects of the Telecommunications Act in defining and facilitating the improvement of zoning processes associated with the placement of towers, the City questions the implication by the digital television industry that local governments will impede their ability to erect towers and broadcast facilities, and therefore, questions the necessity of this preemption rule.

In addition, in order to meet the needs of the wired and wireless communication providers mandated by the Telecommunications Act of 1996, most local governments have encouraged the collocation of two or more service providers on a single tower. However, the proposed preemption rule specifically cites this type of collocation as a deterrent to siting. By not allowing collocation, the proposed rule would encourage an unnecessary proliferation of towers.

Zoning Request Process Issues:

The average zoning request in the City of Suffolk requires approximately 85 to 180 days to be acted on. This time period is needed to account for statutorily mandated notice requirements to the adjacent landowners and the general public, and to allow for public hearings before the Planning Commission and City Council. In addition, depending on the zoning request, there are various levels of site and administrative review that are necessary to ascertain the impact of the zoning request.

Under the proposed preemption rule, local governments will have a maximum 45 days to act on a zoning request for a digital TV, or other broadcast facility. On requests to relocate a facility within 300 feet of an existing facility, this response time is reduced to 30 days, and if the request is to modify an existing transmission facility, local governments will have only 21 days to act on the request.

The City maintains that this timeframe, as proposed under the NAB/AMST preemption rule, would not allow reasonable access to public meetings for those landowners, business entities, and other members of the public, to attend official meetings and voice their concerns on broadcast facility zoning requests. The Planning Commission and City Council public hearing process, including advertising requirements, have developed over the years to ensure that the public has an opportunity to be heard on issues that could have a tremendous impact on their lives. The public expects these types of issues to be presented on a set schedule that allows ample time for the preparation of comments. The proposed preemption rule simply does not allow for the

traditional due process procedures which the public has come to expect and which is necessary to ensure sound decisions on behalf of local governing bodies.

Digital Television and Associated Buildings:

Numerous documents, including the Notice of Proposed Rule Making, indicate that digital television towers can range from 700 to 2,000 feet in height. Towers of this size can have a significant impact on the areas in which they are located. In the Hampton Roads area, where the City of Suffolk is located, it is clear that by May 1, 2002, several digital television towers will be needed. In fact, the City is already working with four local broadcasters to authorize an increase in their analog tower heights to accommodate the needs of digital television service. To suggest that the City should be forced to allow the digital television industry have free reign to erect 2,000 foot towers in any area of the City, as would be required under the preemption rule, is entirely unacceptable and ignores the rights of citizens to have their health and safety, as well as their private property rights protected.

In addition, a 2,000-foot tower would undoubtedly be accompanied by "associated buildings" that would also be exempt from zoning requirements, and even building regulations. Therefore, the ability of local governments to require mitigating actions such as screening, privacy fencing, stormwater control or other general accepted methods that are utilized to lessen the impact of facilities adjoining landowners, the community, and even the environment, would also be preempted. This would represent another affront to traditional local zoning authority and further render the abilities of local governments to protect the private property rights of its citizens impotent.

Radio Towers:

The preemption rule proposed by the NAB and AMST goes well beyond the needs of the digital television industry to construct a limited number of towers. Under the rule, AM and FM radio towers could also preempt local zoning processes under the guise that these towers could be displaced by the construction of new or modified digital television towers. It is estimated that there are 24,000 AM and FM radio towers nationwide. Therefore, local governments could be faced with the prospect of the preemption of their ability to regulate radio towers, even though the loss of this authority would do nothing to advance the deployment of digital television service.

Resolution of Disputes:

The proposed preemption rule grants the FCC exclusive jurisdiction in the resolution of disputes between the digital television industry and local governments. Currently, these types of disputes are resolved through the court system. The preemption of this traditional way of resolving disputes between government and private entities contradicts the intent of Congress to grant local governments full control of local land use and zoning decisions in the Telecommunications Act of 1996. The City maintains that for the FCC to usurp this authority at the request of the broadcasting industry is both inappropriate and unfair.